rial in such inquiry, no means are so effectual as those employed by or in a court of justice; that the act in question is to be taken as a recognition, so far as the United States is concerned, of the legal right of the company to receive the moneys in question, unless it appeared upon judicial investigation that fraud existed, thereby entitling the United States to withhold the same, and that the same presented a subject for judicial investigation in respect of which the parties assert *rights*—the United States insisting upon its rights, under the principles of international comity, to withhold moneys received by it under a treaty, on account of a certain claim presented through it before the commission organized under that treaty in the belief, superinduced by the claimant, that it was an honest demand; the claimant insisting upon its absolute legal right under the treaty and the award of the commission, independently of any question of fraud, to receive the money, and disputing the right of the United States upon any grounds to withhold the sum awarded.

SCHOOLS—DISCRIMINATION AGAINST COLORED CHILDREN—RIGHTS UNDER THE FOURTEENTH AMENDMENT.

In the case of *J. N. Cummings et al.* v. *County Board of Education, of Richmond County, State of Georgia,* reported in 20 Sup. Ct. Rep. 197, the United States Supreme Court sustains the decision of the Supreme Court of the State of Georgia in refusing to grant an injunction restraining the Board of Education from maintaining a high school for white children only and thereby discriminating against colored children. The facts were as follows: The School Board, for economic reasons, as alleged, temporarily suspended the Colored High School in Augusta, attended by about sixty pupils, in order, they claimed, that the funds thus saved might be diverted towards the education in the primary schools of about three hundred children of the same race. The parents of some of the negro children thus deprived of school privileges, brought suit to restrain the collecting of so much of the tax as related to the colored high schools, and to restrain the Board of Education from using any of said funds for the maintenance of the white high schools. In the decision by the Supreme Court, written by Justice Harlan, he says:

"We are not permitted by the evidence in the record to regard that decision as having been made with any desire or purpose on the part of the board to discriminate against any of the colored children of the county on account of their race. The State court did not deem the action of the Board of Education in suspending

temporarily and for economic reasons the high school for colored children a sufficient reason why the defendant should be restrained by injunction from maintaining an existing high school for white children. It rejected the suggestion that the board proceeded in bad faith or had abused the discretion with which it was invested by the statute under which it proceeded, or had acted in hostility to the colored race. Under the circumstances disclosed, we cannot say that this action of the State court was, within the meaning of the Fourteenth Amendment, a denial by the State to the plaintiffs and to those associated with them of the equal protection of the laws or of any privileges belonging to them as citizens of the United States. We may add that while all admit that the benefits and burdens of public taxation must be shared by citizens without discrimination against any class on account of their race, the education of the people in schools maintained by state taxation is a matter belonging to the respective States, and any interference on the part of federal authority with the management of such schools cannot be justified except in the case of a clear and unmistakable disregard of rights secured by the supreme law of the land."

In this same connection reference may be had to the recent case of *Elizabeth Cisco* v. *The School Board of the Borough of Queens, New York City*, decided by the New York Court of Appeals on February 6th, last. Mrs. Cisco's children were sent to the common or public schools in that borough, but admittance was refused them on account of their color, and they were ordered to the separate colored school. She refused to send them there—a plan also adopted by her husband before his death. Mr. Cisco was twice tried before a jury and acquitted each time on the charge of violating the Compulsory Education Act, because he refused to send his children to the colored schools when admittance was denied them to the white school. Mrs. Cisco applied for a mandamus to compel the board to receive her children in the common schools. At special term her motion was denied, the court following the decision of *People ex rel. King* v. *Gallagher*, 93 N. Y. 438. She then appealed to the Court of Appeals. This court, in sustaining the decision of the lower court, says: "In this case there is no claim that the relator's children were excluded from the common schools of the borough, but the claim is that they were excluded from one or more particular schools which they desired to attend, and that they possessed the legal right to attend these schools, although they were given equal accommodations and advantages in another and separate school. We find nothing in the Constitution which deprived the School

Board of the proper management of the schools in its charge or from determining where different classes of patrons should be educated, always providing, however, that the accommodation and facilities were equal to all."

It will be found upon an examination of the authorities that it is almost a universal rule that equality of right does not involve the necessity of educating children of both sexes, or children without regard to their attainments or age in the same school. Any classification which preserves substantially equal school advantages does not impair any rights, and is not prohibited by the Constitution of the United States. Equality of rights is not necessarily identity of rights. *Bertonneau* v. *Board of Directors,* 3 Woods (U. S.) 177; *State* v. *McCann,* 21 Ohio St. 211. Where no separate schools are provided it is also generally held that colored pupils cannot be legally excluded from other schools, and that a writ of mandamus will lie to compel the school authorities to receive the pupils thus debarred from educational privileges. *State* v. *Duffy,* 7 Nev. 342; *Knox* v. *Board of Education,* 45 Kan. 152. At first sight it may appear that the decision of the United States Supreme Court, above referred to, is in conflict with this last proposition, but upon an examination of the case it will be found that this question is not presented, but the relief asked is an injunction to restrain the use of certain funds for the maintenance of a high school for white pupils.